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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re J.D., a Person Coming  
Under the Juvenile Court Law.

B288559  
(Los Angeles County  
Super. Ct. No. CK95854)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

STEPHANIE F.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Marguerite D. Downing, Judge. Affirmed.

Suzanne M. Davidson, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, and Peter Ferrera, Principal Deputy County Counsel, for Plaintiff and Respondent.

Stephanie F. (Mother) appeals from the juvenile court's termination of her family reunification services and finding of detriment to her fourth child, then three-year-old J.D., made at the 18-month review hearing under Welfare and Institutions Code<sup>1</sup> section 366.22. However, Mother did not file a petition for extraordinary writ review of the order terminating her reunification services and setting the section 366.26 hearing, as required by section 366.26, subdivision (d)(1) and (2). Although the juvenile court erred by not orally advising Mother at the 18-month review hearing of the requirement to file a writ petition, the clerk mailed her written notice of the requirement. There is therefore no good cause to excuse Mother's failure to file a writ petition, and her challenge to orders made at the 18-month review hearing are not reviewable on appeal.

Mother also appeals from the order for monitored visitation made at the section 366.26 hearing. She contends the juvenile court abused its discretion by denying her request for unmonitored visitation with J.D. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *A. The Prior Dependency Case*

On November 9, 2012 the juvenile court sustained a section 300 petition filed on behalf of Mother's three oldest children—Precious F., Hazel F. and Isaac D. The juvenile court found true that Isaac's father, Humberto D., hit Mother during her pregnancy with Isaac. In addition, the court sustained the

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<sup>1</sup> Further statutory references are to the Welfare and Institutions Code.

allegations that Mother had a history of illicit drug abuse and recent methamphetamine and marijuana abuse. On prior occasions, Mother was under the influence of controlled substances while caring for the children. The court also found Humberto had a history of illicit drug abuse and was currently abusing methamphetamine, cocaine, and marijuana, which rendered him unable to care for Isaac.

The juvenile court removed the children from Mother's custody. The court ordered Mother to participate in a drug and alcohol program, weekly drug testing, a 12-step program, parenting classes, individual therapy, and a victim support group. The Los Angeles County Department of Children and Family Services (the Department) reported that as of May 10, 2013, Mother had not contacted the Department, had evaded contact with the social worker, and had not complied with her case plan. On June 3, 2013 the juvenile court terminated Mother's family reunification services as to Precious, Hazel, and Isaac.

#### B. *The Detention and Petition*

On November 25, 2013 the Department received a referral alleging general neglect of baby J.D. by Mother based on her failure to comply with court-ordered services in the prior dependency case, a history of evasiveness with the social worker, substance abuse history, and unstable housing. During the investigation, the social worker learned Mother tested positive for methamphetamine on April 1, 2013 while she was six weeks pregnant. Mother attended a drug rehabilitation program starting on July 8, 2013, and had weekly drug tests. She had negative drug tests from July 8 to December 10, 2013. Mother also tested negative during her delivery of J.D.

On December 17, 2013 J.D. was detained and placed with Juan D. (Father). The Department determined J.D. was at “very high risk” of abuse and neglect because of Mother’s open case with her other three children, her substance abuse history, including a 2012 arrest for drug possession, and J.D.’s young age.

On December 23, 2013 the Department filed a section 300 petition on behalf of J.D. The petition alleged Mother had a nine-year history of illicit drug use, including marijuana, methamphetamine, and alcohol. She was arrested on August 18, 2012 for drug possession. In addition, Mother tested positive for methamphetamine on April 1, 2013 and used methamphetamine and alcohol during her pregnancy with J.D. Further, J.D.’s siblings—Precious, Hazel, and Isaac—were receiving permanent placement services because of Mother’s drug use. The petition alleged Mother’s substance abuse rendered her incapable of providing J.D. with regular care and supervision and endangered the child’s physical health and safety, placing her at risk of physical harm, damage, and danger.

At the December 23, 2013 detention hearing, the juvenile court released J.D. to Mother and Father on the condition Mother stay in her current substance abuse counseling program and enroll in an aftercare program. The court ordered the Department to provide Mother with appropriate family maintenance services, including referrals for weekly random drug testing, individual counseling, and aftercare counseling.

### C. *The Jurisdiction and Disposition Hearing*

At the March 27, 2014 jurisdiction and disposition hearing, the juvenile court sustained the petition under section 300, subdivisions (b)(1) and (j). The court ordered J.D. placed in the home of Mother and Father under the Department’s supervision.

The court acknowledged Mother had completed her substance abuse program and was participating in an aftercare program. The juvenile court ordered Mother to comply with her aftercare program. In addition, the court ordered Mother to participate in alcohol and drug counseling, weekly random alcohol and drug testing, parenting classes, and individual counseling.

D. *The Section 364 Hearing*

At the September 23, 2014 section 364 six-month review hearing, the juvenile court ordered the Department to provide additional family maintenance services to Mother and Father. The court directed the Department to help Mother acquire beds for her three older children because she had been granted unmonitored overnight and weekend visits with them. The court allowed the Department discretion to set the matter on calendar for a home-of-parent order for Precious, Hazel, and Isaac.

E. *The Subsequent Petition and Adjudication*

On November 21, 2014 the Department filed a subsequent petition under section 342. The petition alleged Mother and Father had a history of domestic violence in the presence of J.D. The petition also alleged Father used methamphetamine, and Mother knew of his drug use and failed to protect J.D.

At the November 21, 2014 detention hearing, the juvenile court detained J.D. and removed her from the custody of Mother and Father. The court ordered the Department to provide family reunification services to Mother and Father. The court granted monitored visits for Mother twice a week for two hours each visit.

At the March 11, 2015 adjudication hearing, the juvenile court sustained the amended section 342 petition under section 300, subdivision (b)(1). The court found Mother and Father had

an “unresolved history of engaging in violent altercations” in J.D.’s presence. On October 23, 2014 Father covered Mother’s mouth and inflicted bruises on her face. He also grabbed her by the arms and pushed her to the ground, causing her to hit her head on a dresser. On a prior occasion, Mother attempted to stab Father with scissors. Mother had also “engaged in mutual combat with [Father].” Mother failed to protect J.D. by allowing Father to reside in the home and have unlimited access to the child. In addition, J.D.’s siblings—Precious, Hazel, and Isaac—were current dependents of the court because of Mother’s prior domestic violence issues. The juvenile court found Father “ha[d] an unresolved recent history of using methamphetamine which render[ed] the father incapable of providing the child with regular care and supervision.” Further, Mother knew of Father’s illicit drug use and failed to protect J.D.

The juvenile court removed J.D. from the custody of Mother and Father. The court ordered Mother to participate in a domestic violence program and support group for victims, a 12-step program, weekly random alcohol and drug testing, and individual counseling to address domestic violence, child protection, and codependency. The court granted monitored visits for Mother twice a week with all four children, with the Department having discretion to liberalize visitation.

F. *The Six-month Review Hearing and Report*

At the September 9, 2015 six-month review hearing, the juvenile court granted Mother unmonitored day visits with her four children. The unmonitored visits were conditioned on Mother continuing to have clean weekly random drug tests. The court ordered, “If a dirty test occurs[,] the visit(s) [would] automatically revert back to monitored [visits].” The juvenile

court continued the hearing because Mother and Father set the matter for a contested hearing to request liberalization of their visits or return of J.D. to their custody.

The January 6, 2016 six-month review report stated J.D. was placed in the home of the paternal aunt, Amparo April D. (April). Mother's visitation reverted to monitored visits after she missed two drug tests on August 26 and September 15, 2015, and tested positive for alcohol on October 9, 2015, at 0.03 percent.<sup>2</sup> April reported Mother was timely, cooperative, and behaved appropriately during her visits with the children.

The report stated Mother had enrolled in an outpatient drug program in December 2015. She continued consistently to participate in individual therapy and attend Alcoholics Anonymous and Narcotics Anonymous meetings. In July 2015 Mother completed a 26-session domestic violence program. However, the Department recommended monitored visits for Mother and Father because they were not in full compliance with their case plans.

At the continued January 6, 2016 contested six-month review hearing, the juvenile court found Mother and Father were in partial compliance with their case plans. The court admonished Mother to work on her sobriety. The court ordered monitored visits for Mother with the Department having discretion to liberalize visitation.

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<sup>2</sup> Mother also submitted urine tests on September 21, September 28, and October 13, 2015 that were noted to be diluted.

G. *The 12-month Review Hearing and Report*

The June 29, 2016 interim review report stated Mother tested positive for cocaine on February 10, 2016. Because Mother maintained she had not used cocaine, the sample was re-tested. The results confirmed the sample was positive for cocaine. Mother had otherwise tested negative from January 5 to June 20, 2016. Mother continued consistently to visit her four children, two times a week for two hours each visit. She had improved her ability to set boundaries with the children; however, Isaac and Hazel did not consistently follow Mother's directives. The children interacted freely in Mother's presence, and had good sibling interaction. The Department acknowledged Mother's demonstrated effort to comply with her case plan, but recommended termination of family reunification services based on Mother's positive drug test and her failure to inform the social worker about her current circumstances and home address.

At the 12-month review hearing on October 20, 2016, the juvenile court granted Mother unmonitored day visits with J.D. on the condition she test negative for drugs, with the Department having discretion to liberalize visitation. The court continued the contested hearing to allow the Department and Mother to find appropriate housing for her. The court directed the Department "to assess [Mother's] compliance and progress and to look into returning the child to [Mother's] custody if [it is] appropriate and housing is in place."

H. *The 18-month Review Hearing and Reports*

The December 8, 2016 interim review report recommended placement of J.D. with Mother. The report stated Mother was employed by her godmother and was no longer transient. She had been proactive with her case worker regarding housing



referrals and applications. Mother completed a domestic violence program in July 2015 and an outpatient and aftercare drug program on September 21, 2016. In addition, she continued to have weekly negative drug tests from February 16 to November 16, 2016. She continued to attend individual therapy and Alcoholics Anonymous and Narcotics Anonymous meetings. Further, both the social worker and caregiver reported Mother's six-hour unmonitored day visits with J.D. were going well with no incidents or problems. J.D. appeared comfortable, playful, smiling, and affectionate with Mother during the visits. Mother engaged with J.D., set limits for the child, was affectionate, and promptly changed her diaper.

On December 8, 2016 the juvenile court continued the contested hearing to February 15, 2017 because of court congestion. The court ordered the Department to evaluate Mother's home. In addition, the court gave the Department discretion to liberalize Mother's visits with J.D. to include overnight and extended visits if appropriate.

In the February 9, 2017 last minute information for the court, the Department reported Mother had failed to work toward unmonitored overnight visits, did not show she could maintain consistent suitable housing, had failed several times to respond to the social worker's efforts to contact her, and was evasive and uncooperative in her meetings with the social worker regarding her living situation. The Department recommended termination of Mother's family reunification services.

According to the report, social worker Sandra Paredes made an unannounced visit to a house located on Dacosta Street in Downey, California that Mother claimed was her residence. A "For Sale" sign was on the property. A male sitting on the house porch told Paredes he was a "friend of the baby's dad" and he was

“doing him (father) a favor.” He stated Mother rented a room and was there often but he did not know when she was home because they had different schedules. On February 8, 2017 Mother confirmed she did not reside at the Dacosta Street address she had previously provided to the Department. Mother stated she had been living with the maternal grandmother for the prior three months, but the maternal grandmother later denied this was true.

In addition, the Department was informed Mother was in an unstable relationship with a physically abusive boyfriend. The maternal grandmother stated Mother’s off-and-on boyfriend was in a gang, and Mother was five to six months pregnant. The paternal grandmother reported that around October or November 2016, Mother’s boyfriend choked Mother. The maternal grandmother saw Mother after the incident, and described her as “crying” and “hysterical,” with a “red mark around her neck.” Mother denied she was in a relationship or that any domestic violence incident occurred. Mother also denied she was pregnant.

At the contested 18-month review hearing on February 15, 2017, the juvenile court terminated Mother’s reunification services, finding “her 18 months plus of reunification services has expired and she is not in compliance with the case plan.” The court deemed the Department’s report as a section 385 petition and limited Mother’s visitation with J.D. to monitored visits twice a week for two hours each visit. The court did not orally advise Mother of her right to file a writ petition to challenge the order terminating reunification services and setting the section 366.26 hearing.

However, the February 15, 2017 minute order stated, “The judicial assistant mails the parties/counsels their writ of appeal rights along with a copy of today’s minute order.” On the same

day, the court clerk mailed to Mother at the Dacosta Street address a “Notification of Rights,” an “Advisement of Rights,” a “Notice of Intent to File Writ Petition and Request for Records” (form JV-820), a “Petition for Extraordinary Writ” (form JV-825), and the February 15, 2017 minute order.

I. *The Section 366.26 Hearing and Reports*

The June 14, 2017 status review report stated J.D. had lived with paternal aunt April “for over 28 months.” On February 27, 2017 April reported J.D.’s last visit with Mother was two weekends prior. J.D. had been asking for Mother and recently started having tantrums. Mother did not contact April for about a month after the February 15, 2017 hearing. On April 27, 2017 April stated Mother had recently resumed visits. During a meeting with Paredes, J.D. told her, “[M]y mom has a tummy, a baby in her tummy . . . .” On May 17, 2017 April reported Mother was consistent with the weekday visits, but not the weekend visits.

In the September 21, 2017 last minute information for the court prepared for half-sister baby Evelyn’s recently filed dependency case, social worker Susan Villa interviewed Mother at her new home.<sup>3</sup> Mother lived in a three-bedroom, two-bathroom duplex with Amber S., Zaidys G., and Zaidys’s three children. Mother told Villa she had a casual relationship with

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<sup>3</sup> The report from Evelyn’s dependency case was admitted into evidence at the section 366.26 hearing for J.D. We recently considered Mother’s appeal from the juvenile court’s jurisdictional findings and dispositional order removing Evelyn from Mother’s custody. We reversed the jurisdictional findings but concluded the appeal from the dispositional order was moot. (*In re Evelyn F.* (Sept. 17, 2018, B287311) [nonpub. opn.] )

Evelyn's father for about two to three years. The maternal grandmother reported a domestic violence incident with Evelyn's father to Villa, but Mother denied there was any domestic violence. Mother admitted she should not have lied to Paredes about her pregnancy with Evelyn.

The October 4, 2017 section 366.26 report indicated Mother regularly visited all four children every Tuesday afternoon for two hours. She brought Evelyn to the visits. Although the juvenile court allowed Mother a second two-hour visit each week with J.D., Mother did not consistently call April to schedule those visits. On June 28, 2017 April reported J.D. had been happy with her unmonitored day visits with Mother, which took place at a fast food restaurant. J.D. looked forward to the unmonitored day visits and returned from the visits happy. J.D.'s visits had recently reverted to monitored visits, and J.D. inquired why she no longer had weekend visits with Mother.

During a monitored visit in June 2017, Mother focused most of her attention on new baby Evelyn, and not her other children. After the visit J.D. engaged in disruptive behavior at school. Mother did not visit J.D. on Mother's Day, and declined invitations to visit J.D. on other holidays and special occasions. April initiated phone contact with Mother in between visits, and informed her about J.D.'s medical appointments, but Mother did not attend or inquire about the results.

The November 8, 2017 last minute information for the court stated Mother continued to attend the Tuesday visits and recently began requesting a second weekly visit with J.D. In addition, Mother started sending text messages to April to inquire about J.D.'s well-being. April stated she was not opposed to Mother having unmonitored visits, but was not yet comfortable with overnight visits.

Social worker Leah Manfre found Mother's home environment was poor because roommates Zaidys and Amber had child abuse referrals. Amber was investigated in August 2017 for alleged neglect and physical abuse of her four-year-old son; the Department found the allegations to be inconclusive. Zaidys had an open case with her three children as of March 2017, and was under investigation based on an October 30, 2017 child abuse referral. But according to the September 21, 2017 last minute information for the court in Evelyn's dependency case, Zaidys had her children in her care notwithstanding the open case. The Department recommended the juvenile court appoint April as J.D.'s legal guardian, and order monitored visits for Mother. The Department based its recommendation on Mother's failure to utilize fully her two unmonitored visits (noting Mother only recently requested a second weekly visit and initiated telephone contact with J.D. between visits), and Paredes's representation that Mother had not complied with her case plan for Evelyn.

The January 5, 2018 last minute information for the court reported Mother had been testing clean every week. However, although Mother had started visiting J.D. for a second visit, she had not visited J.D. since November 10, 2017. Mother cancelled three Tuesday visits with her four children. J.D. used to ask about Mother, but no longer inquired after Mother stopped visiting. In contrast, beginning on December 22, 2017, Mother's visits with Evelyn progressed to unsupervised weekend visits, for four to five hours per week. The Department continued to recommend monitored visits for Mother because she had not "fully utilized the visitation that has been afforded to her."

At the January 9, 2018 section 366.26 hearing, Mother's counsel stated Mother did not object to April's legal guardianship over J.D. However, Mother requested unsupervised visitation

with J.D. based on her negative drug tests and her unmonitored visits with Evelyn. As to the frequency of visits, Mother's counsel noted Mother had been having health issues and was scheduled for surgery the following day. Mother's counsel also noted it was difficult for Mother to see her five children, all of whom were in different placements, and that unmonitored visits would facilitate the relationship between Mother and J.D. The Department argued that because Mother had not taken advantage of the second visits, it was not able to observe the visits sufficiently to ensure they were appropriate and J.D. was benefitting from them.

The juvenile court received into evidence the section 366.26 report, the December 12, 2017 status review report, and Mother's negative drug test results from January 5 to August 25, 2017. The court also admitted documents relating to Evelyn's dependency case, including her court-ordered case plan and a September 21, 2017 last minute information for the court. After oral argument, the juvenile court appointed April as J.D.'s legal guardian. The court granted Mother monitored visits twice a week for two hours per visit, with the legal guardian having the discretion to liberalize visitation. The court terminated jurisdiction.

## **DISCUSSION**

### ***A. Mother Cannot Appeal the Juvenile Court's Termination of Family Reunification Services and Finding of Detriment to J.D. from Returning J.D. to Mother's Custody***

The Department contends Mother forfeited her challenge to the juvenile court's order at the February 15, 2017 hearing, terminating her family reunification services and finding that

returning J.D. to Mother’s custody would be detrimental to J.D., because Mother did not file a petition for an extraordinary writ to review the order terminating reunification services and setting a section 366.26 hearing. We agree.

Generally, an order denying or terminating family reunification services and setting a section 366.26 hearing is not appealable and may only be reviewed by way of a writ petition. (§ 366.26, subd. (l)(1), (2); *In re Hannah D.* (2017) 9 Cal.App.5th 662, 678 (*Hannah D.*); *In re A.H.* (2013) 218 Cal.App.4th 337, 346; *In re T.W.* (2011) 197 Cal.App.4th 723, 729.) However, a parent may challenge an order terminating reunification services on appeal if the juvenile court did not advise the parent of his or her right to seek writ review of the order terminating reunification services and setting the section 366.26 hearing. (*In re A.A.* (2016) 243 Cal.App.4th 1220, 1235 [“when a parent is not properly advised of his or her right to challenge the setting order by extraordinary writ, . . . good cause exists to consider issues relating to the setting hearing”]; *In re Lauren Z.* (2008) 158 Cal.App.4th 1102, 1110 [mother could challenge order terminating her reunification services where she did not receive writ advisement]; *In re Harmony B.* (2005) 125 Cal.App.4th 831, 838-839 [because father was not given notice, he could raise issues concerning the setting hearing in appeal from orders following the § 366.26 hearing]; *In re Maria S.* (2000) 82 Cal.App.4th 1032, 1038 [mother could challenge termination of reunification services based on lack of advisement of right to writ review].)

As of February 15, 2017, when the juvenile court terminated Mother’s family reunification services and set the section 366.26 hearing, section 366.26, subdivision (l)(3)(A), required the court to provide notice “orally to a party if the party

is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.” (Former § 366.26, subd. (l)(3)(A).)<sup>4</sup> Subdivision (l)(3)(A) required the Judicial Council to adopt rules of court to ensure the juvenile court provides the required notice.

Pursuant to this section, the Judicial Council implemented California Rules of Court, former rule 5.590(b),<sup>5</sup> which provided: “When the court orders a hearing under Welfare and Institutions Code section 366.26, the court must advise all parties and, if present, the child’s parent, guardian, or adult relative, that if the party wishes to preserve any right to review on appeal of the order setting the hearing under Welfare and Institutions Code section 366.26, the party is required to seek an extraordinary writ by filing a *Notice of Intent to File Writ Petition and Request for Record (California Rules of Court, Rule 8.450)* (form JV-820) or other notice of intent to file a writ petition and request for record and a *Petition for Extraordinary Writ (California Rules of Court, Rules 8.452, 8.456)* (form JV-825) or other petition for extraordinary writ. [¶] (1) The advisement must be given orally to those present when the court orders the hearing under Welfare and Institutions Code section 366.26. [¶] (2) Within one day after the court orders the hearing under Welfare and Institutions

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<sup>4</sup> Section 366.26, subdivision (l)(3)(A), was amended effective January 1, 2018, but continues to require the juvenile court orally to advise a party of the writ petition requirement if he or she is present at the hearing. (§ 366.26, subd. (l)(3)(A)(i).)

<sup>5</sup> All further references to rules are to the California Rules of Court. Rule 5.590(b)(2) and (4) was amended effective January 1, 2019.



Code section 366.26, the advisement must be sent by first-class mail by the clerk of the court to the last known address of any party who is not present when the court orders the hearing under Welfare and Institutions Code section 366.26. . . .”<sup>6</sup>

The juvenile court here failed orally to advise Mother at the February 15, 2017 18-month review hearing of the requirement to file a writ petition, as required by section 366.26, former subdivision (l)(3)(A), and rule 5.590(b)(1). However, on the same day the court clerk mailed to Mother—at the Dacosta Street address she provided to the Department—the notification of rights, advisement of rights, form petition, and notice of intent to file petition, as well as a copy of the February 15, 2017 minute order.

On appeal, Mother initially claimed she did not receive the written notice by mail, but later admitted in her reply brief that the record indicated the writ advisement was mailed to her. Mother had an obligation to notify the juvenile court, her attorney, and the Department of any changes in her mailing address, and was advised by the court of this requirement at the detention hearing. Thus, regardless of whether Mother received the writ advisement at the Dacosta Street address,<sup>7</sup> the clerk

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<sup>6</sup> Former rule 5.590(b) provided further: “(3) The advisement must include the time for filing a notice of intent to file a writ petition. [¶] (4) Copies of *Petition for Extraordinary Writ* (California Rules of Court, Rules 8.452, 8.456) (form JV-825) and *Notice of Intent to File Writ Petition and Request for Record* (California Rules of Court, Rule 8.450) (form JV-820) must be available in the courtroom and must accompany all mailed notices informing the parties of their rights.”

<sup>7</sup> Although Mother provided the Dacosta Street address to the Department, it is not clear from the record whether she lived

satisfied the obligation to provide written notice under section 366.26, former subdivision (l)(3)(A), to Mother at the address she provided to the court. (*In re A.H.*, *supra*, 218 Cal.App.4th at pp. 349, 351 [father not excused from writ requirement where written notice was provided to address father provided to the court, even though envelope was returned to the court with no forwarding address].)

Contrary to Mother's contention, the juvenile court's failure to provide an oral writ advisement, as required by section 366.26, former subdivision (l)(3)(A), and rule 5.590(b)(1) does not excuse Mother's failure to file a writ petition where the court provided written notice of the requirement. (See *Hannah D.*, *supra*, 9 Cal.App.5th at p. 682; *In re A.H.*, *supra*, 218 Cal.App.4th at p. 351.)

In *Hannah D.*, the juvenile court failed orally to advise the father of the necessity of seeking writ review as required by section 366.26, former subdivision (l)(3)(A), and rule 5.590(b)(1). (*Hannah D.*, *supra*, 9 Cal.App.5th at p. 680.) But the father "was personally served with written notice that he must seek writ review to preserve issues for appeal." (*Id.* at p. 681.) The court observed, "That [the father] was not *also* given an oral advisement is regrettable and violative of Rule 5.590(b)(1); but the ultimate purpose of the rule (i.e., actual notice) was accomplished by written notice." (*Ibid.*) The court concluded the

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there at the time the clerk mailed notice of the writ advisement and the required documents to her. Mother told social worker Paredes on February 8, 2017 that she did not reside at the Dacosta Street house, but failed to provide a new address. However, when Paredes visited the Dacosta Street address, a male living there stated Mother was renting a room in the house.

father's challenge to the order terminating reunification services was not appealable, explaining that "a dependency court's failure to follow Rule 5.590(b)(1)'s oral advisement requirement, alone, does not render the requirements of section 366.26, subdivision (d)(1)(A) and (2) inapplicable." (*Id.* at p. 682.)

Mother contends *Hannah D.* is distinguishable because the father in *Hannah D.* was personally served with the written advisement at the hearing, but she was served by mail. But the court in *Hannah D.* based its holding on the fact that the purpose of the oral advisement to provide actual notice "was accomplished by written notice." (*Hannah D.*, *supra*, 9 Cal.App.5th at p. 681). Similarly, the mailing of the advisement and required documents to Mother at the home address she provided the Department and the court accomplished the goal of actual notice. Mother's failure to update her address does not excuse her from the requirement to file a writ petition to challenge the juvenile court's order terminating reunification services under section 366.26, subdivision (d)(1) and (2). (See *In re A.H.*, *supra*, 218 Cal.App.4th at p. 351.) Thus, Mother's challenges to the termination of her reunification services and finding that returning J.D. to her custody would be detrimental to J.D. are not cognizable on appeal.

B. *The Juvenile Court Did Not Abuse Its Discretion in Ordering Monitored Visitation for Mother*

At the January 9, 2018 section 366.26 hearing, the juvenile court appointed April as J.D.'s legal guardian and granted Mother monitored visits, with April having discretion to liberalize Mother's visitation. Because the court ordered legal guardianship as the permanent plan for J.D., Mother's visitation is governed by section 366.26, subdivision (c)(4)(C). (*In re S.H.*

(2011) 197 Cal.App.4th 1542, 1558; *In re Rebecca S.* (2010) 181 Cal.App.4th 1310, 1313.) Section 366.26, subdivision (c)(4)(C), provides, “The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.”

“After the termination of reunification services, the parents’ interest in the care, custody, and companionship of the child are no longer paramount . . . [and] ‘the focus shifts to the needs of the child for permanency and stability.’” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317; accord, *In re K.C.* (2011) 52 Cal.4th 231, 236.) The juvenile court must focus on the child’s best interests in determining visitation when establishing a permanent plan of legal guardianship. (*In re Stephanie M.*, at p. 317; *In re S.H.*, *supra*, 197 Cal.App.4th at p. 1559.) We review a juvenile court’s determination of visitation for an abuse of discretion. (*In re S.H.*, at pp. 1557-1558 [“dependency law affords the juvenile court great discretion in deciding issues relating to parent-child visitation, which discretion we will not disturb on appeal unless the juvenile court has exceeded the bounds of reason”]; accord, *In re Rebecca S.*, *supra*, 181 Cal.App.4th at p. 1314 [reviewing visitation order for abuse of discretion].)

In this case, the juvenile court followed the Department’s recommendation and granted Mother monitored visits, twice a week for two hours each visit. We recognize the significant progress Mother made in completing her case plan. She completed a domestic violence program in July 2015 and an outpatient and aftercare drug program on September 21, 2016, and she participated in individual counseling and Narcotics Anonymous and Alcoholics Anonymous meetings as required by her case plan. Mother continued to test negative for drugs since

completing her drug program on September 21, 2016. Her last positive drug test was for cocaine on February 10, 2016, almost two years before the January 9, 2018 section 366.26 hearing.

However, the Department raised a concern about a continuing domestic violence issue, pointing to the paternal grandmother's report of an October or November 2016 domestic violence incident between Mother and Evelyn's father in which he choked her. The maternal grandmother described Mother after the incident as "crying" and "hysterical," with a "red mark around her neck."

The Department also expressed a concern over Mother's lack of cooperation with the social worker, as evidenced by her failure to disclose her pregnancy with Evelyn and her evasive responses regarding her housing situation, as described in the February 9, 2017 last minute information for the court. By the time of the January 9, 2018 section 366.26 hearing, according to social worker Leah Manfre, Mother had stable housing and had been living in the three-bedroom house since January 2017. However, Manfre found Mother's home environment was poor because her roommates, Amber and Zaidys, had child abuse referrals. The allegations of alleged child neglect and physical abuse by Amber of her four-year-old son were found by the Department to be inconclusive. But Zaidys continued to have an open case with her three children as of March 2017 and was under investigation based on an October 30, 2017 child abuse referral.

The Department also based its recommendation for monitored visits on the fact Mother had not "fully utilized the visitation that has been afforded to her." In response Mother points to the positive unmonitored day visits she had with J.D. from October 22 to November 21, 2016, all but one of which were

six hours long. April reported J.D. looked forward to the visits and returned happy afterwards. However, in 2017 Mother had not visited with J.D. between November 10 and December 21, and had only utilized her second weekly visit with J.D. on three occasions. ~ (6 CT 1587) ~ At the section 366.26 hearing, the Department argued that given the limited visits, it was not able to observe the visits sufficiently to ensure they were appropriate and J.D. benefitted from them.

In light of this record, it was not an abuse of discretion for the juvenile court to determine based on this record that monitored visits were in the best interests of J.D.

### **DISPOSITION**

We affirm the February 15, 2017 order for monitored visitation.

FEUER, J.

WE CONCUR:

ZELON, Acting P. J.

SEGAL, J.